

## **VICTIM IMPACT STATEMENT** **RECOMMENDED PROCESSING PROCEDURES**

The **VIS** Recommended Processing Procedures can be implemented in whole or in part in any district and county attorney's office.

If at any time you should need clarification or assistance with these **VIS** Recommended Processing Procedures, please contact the Texas Department of Criminal Justice, Victim Services Division at 1-800-848-4284 or [tdcj.clearinghouse@tdcj.state.tx.us](mailto:tdcj.clearinghouse@tdcj.state.tx.us). If you would like to request **VIS** training, please contact the TDCJ VSD. We are here to assist you.

This document is based on statutes current through the 3<sup>rd</sup> Called Session of the 83<sup>rd</sup> Legislature of the *Code of Criminal Procedure Title 1, Chapter 56. Rights of Crime Victims, Subchapter A. Crime Victims' Rights*.

*The Texas Department of Criminal Justice (TDCJ) would like to thank members of the 2013 Victim Impact Statement Revision Committee and all other agencies and individuals—including the Board of Pardons and Paroles, law enforcement agencies, prosecutors' offices, and other participants in the criminal justice system—who provided support and assistance during the development of the VIS Recommended Processing Procedures.*

"Victim" means a person who is the victim of the offense of sexual assault, kidnapping, aggravated robbery, trafficking of persons, or injury to a child, elderly individual, or disabled individual or who has suffered personal injury or death as a result of the criminal conduct of another. **Art. 56.01(3).**

"Close relative of a deceased victim" means a person who was the spouse of a deceased victim at the time of the victim's death or who is a parent or adult brother, sister, or child of the deceased victim. **Art. 56.01(1).**

"Guardian of a victim" means a person who is the legal guardian of the victim, whether or not the legal relationship between the guardian and victim exists because of the age of the victim or the physical or mental incompetency of the victim. **Art. 56.01(2).**

1. Not later than the 10th day after the date that an indictment or information is returned against a defendant for an offense, the attorney representing the state shall give to each victim of the offense a written notice containing **Art. 56.08(a)**:
  - the right to file a **Victim Impact Statement (VIS)** with the office of the attorney representing the state and the Texas Department of Criminal Justice (TDCJ) **Art. 56.08(a)(7)**; and
  - a brief general statement of each procedural stage in the processing of a criminal case, including bail, plea bargaining, parole, restitution, and appeal **Art. 56.08(a)(1)**; and
  - a determination of whether the attorney representing the state has given the victim, guardian of a victim, or close relative of a deceased victim notice of the existence and terms of the plea bargain agreement **Art. 56.08(b-1)**; and
  - a statement that the **VIS** provided by the victim, guardian of a victim, or close relative of a deceased victim will be considered by the attorney representing the state in entering into the plea bargain agreement **Art. 56.08(e)(1)**; and
  - a statement that the judge, before accepting the plea bargain agreement, is required under **Article 26.13(e)** to ask whether a **VIS** has been returned to the attorney; (and) if a **VIS** has been returned, for a copy of the statement; **Art. 56.08(e)(2)(A-C)**.

- ✓ **Recommendation:** The Texas Crime Victim Clearinghouse brochure titled, *It's Your Voice* can assist you with the above written notifications as the brochure contains some of the above required information that must be given to victims. This brochure is available to download at <http://tdcj.state.tx.us/victim/victim-home.htm> or contact the TDCJ Victim Services Division (VSD) at 1-800-848-4284 or [tdcj.clearinghouse@tdcj.state.tx.us](mailto:tdcj.clearinghouse@tdcj.state.tx.us) to request copies.

2. The victim assistance coordinator (VAC) shall send to a victim, guardian of a victim, or close relative of a deceased victim a **VIS** along with an offer to assist in completing the **VIS** on request. **Art. 56.03(c).**

- The Texas Crime Victim Clearinghouse along with other state agencies developed the **VIS** to be used by law enforcement agencies, attorneys representing the state, and other participants in the criminal justice system to record the impact of an offense on a victim of the offense, guardian of a victim, or a close relative of a deceased victim and to provide the agencies, attorneys representing the state, and participants with information needed to contact the victim, guardian, or relative if needed at any stage of a prosecution of a person charged with the offense. **Art. 56.03(a).**
- Available versions of the **VIS** include English, Spanish, Spanish with English subtext, Just for Kids (English and Spanish with English subtext), and Victims of Juvenile Offenders. These **VIS** versions are available to download at: [tdcj.state.tx.us/publications/victim.svcs/publications-victims-svc-victim-impact-statement.htm](http://tdcj.state.tx.us/publications/victim.svcs/publications-victims-svc-victim-impact-statement.htm) or contact the TDCJ VSD at 1-800-848-4284 or [tdcj.clearinghouse@tdcj.state.tx.us](mailto:tdcj.clearinghouse@tdcj.state.tx.us) to request copies.

3. The VAC, on request, shall explain to a victim, guardian of a victim, or close relative of a deceased victim the possible use and consideration of the **VIS** at sentencing and future parole hearing of the offender. **Art. 56.03(c).**

- Explain to a victim, guardian of a victim, or close relative of a deceased victim that the **VIS** will be considered by the attorney representing the state and the judge before sentencing or before a plea bargain agreement is accepted; and that the **VIS** will be considered by the Board of Pardons and Paroles before an inmate is released on parole. **Art. 56.02(a)(13)(A-B).**
- ✓ **Recommendation:** Have packets prepared and ready to mail to victims. Include in the packet the **VIS**, a letter offering to assist the victim in completing the **VIS**, *It's Your Voice* brochure, and additional information as required by law. If possible, include a self addressed envelope for the victim to return the **VIS** to the VAC.
- ✓ **Recommendation:** Complete the box on the Cover Sheet, the Victim Contact Information Sheet, and the Victim Impact Statement Sheet of the **VIS** before providing it to the victim.
- ✓ **Recommendation:** Explain to the victim that the **VIS** is considered by the attorney representing the state to determine restitution amount, if requested.
- ✓ **Recommendation:** Explain to the victim that by completing the Victim Contact Information Sheet portion of the **VIS**, he or she can elect to be notified of relevant court proceedings if the defendant is placed on community supervision or incarcerated in the TDCJ Correctional Institutions Division (CID). A victim may choose to only complete this portion of the **VIS**.
- ✓ **Recommendation:** Explain to the victim, guardian of a victim, or close relative of a deceased victim that by completing the Victim Contact Information Sheet portion of the **VIS** he or she can elect to be notified if the offender is being considered for parole or release if the defendant is incarcerated in the TDCJ CID, and he or she can also elect that communications by the offender be restricted. A victim may choose to only complete this portion of the **VIS**.

- ✓ **Recommendation:** Explain to the victim that by completing the Victim Contact Information Sheet portion of the **VIS** he or she can elect to be added, if the defendant is incarcerated in the TDCJ CID, to the TDCJ VSD Victim Notification System (VNS), which utilizes a confidential database to provide victims with over 80 points of possible notification regarding several phases of an offender's incarceration and supervision, including but not limited to escape, bench warrants, discharge, and release on parole or mandatory supervision. This is contingent on the TDCJ receiving the **VIS** in the offender's penitentiary packet. **Art. 42.09.**
- ✓ **Recommendation:** Explain to the victim that by completing the Supplemental Form of the **VIS** he or she can provide important information to be used by the TDCJ VSD if the defendant in the case is incarcerated on the offense involving a child victim. If the defendant has a court order that grants him possession or access to the minor child, the TDCJ VSD will notify the appropriate court prior to the defendant's release on parole/mandatory supervision. **Art. 56.03(i).**
- ✓ **Recommendation:** Explain to the victim that the **VIS** is considered by the Board of Pardons and Paroles before an inmate is released on parole. This is contingent on the TDCJ receiving the **VIS** in the offender's penitentiary packet (Art. 42.09), which will be processed to add the victim, if requested, to the TDCJ VSD VNS and be included in the offender's parole review file.
- ✓ **Recommendation:** Offer additional assistance to help the victim complete the **VIS**, if necessary.
- ✓ **Recommendation:** Set up a victim file. Record helpful information such as the victim's name, address, phone number, defendant's name, case/cause number, SID number, assigned court, assistant district attorney, receipt of **VIS**, etc.
- ✓ **Recommendation:** Begin tracking dates and persons responsible for **VIS** processing. Tracking points may include when the **VIS** was sent to and received from the victim. As **VIS** processing proceeds, tracking points could include when the **VIS** is given to the attorney representing the state, submitted to the judge, sent to the Community Supervision and Corrections Department (CSCD), or when a copy of the **VIS** is attached to the commitment papers to be sent to the TDCJ CID. If the victim does not return the **VIS**, follow up attempts to encourage the victim to complete the **VIS** could be tracked as well. A **VIS** tracking system may assist with completing the **VIS** Activity Reports collected by the TDCJ VSD Texas Crime Victim Clearinghouse. **Art. 56.05.**

**4. If the victim completes and returns the *VICTIM IMPACT STATEMENT*.**

- On the inquiry by the court, the attorney representing the state shall make available a copy of the **VIS** for consideration by court sentencing the defendant. **Art. 56.04(e).**
- As far as reasonably practical, the address of the victim may not be a part of the court file except as necessary to identify the place of the crime. The phone number of the victim may not be a part of the court file. **Art. 56.09.**
- A **VIS** is subject to discovery under Article 39.14 of this code (Code of Criminal Procedure) before the testimony of the victim is taken only if the court determines that the statement contains exculpatory material. **Art. 56.03(g).**
- The court may not inspect a **VIS** until after a finding of guilt or until deferred adjudication is ordered and the contents of the statement may not be disclosed to any person unless the defendant pleads guilty or *nolo contendere* or is convicted of the offense; or the defendant in writing authorizes the court to inspect the **VIS**. **Art. 56.03(f)(1-2).**

- The victim has the right to provide pertinent information to a probation department conducting a presentencing investigation concerning the impact of the offense on the victim and his family by testimony, written statement, or any other manner prior to any sentencing of the offender. **Art. 56.02(a)(5).**
  - Prior to the imposition of a sentence by the court in a criminal case, the court, shall, as applicable in the case, inquire as to whether a VIS has been returned to the attorney representing the state, and if the VIS has been returned to the attorney representing the state, shall consider the information provided in the VIS **Art. 56.03(e).**
  - A victim has the right to have the **VIS** considered by the attorney representing the state and the judge before sentencing or before a plea bargain is accepted. **Art. 56.02(a)(13)(A).**
  - The **VIS** provided by the victim, will be considered by the attorney representing the state in entering into the plea bargain agreement. The judge, before accepting the plea bargain agreement, is required under Article 26.13(c) to ask whether a **VIS** has been returned to the attorney; (and) if a **VIS** has been returned, for a **copy** of the statement. **Art. 56.08(e)(1)(2)(A-B).**
  - The judge will consider the **VIS** before sentencing or before a plea bargain agreement is accepted. **Art. 56.02(a)(13)(A).**
  - Before sentencing the defendant, the court shall permit the defendant or the defendant's counsel a reasonable time to read the statement, excluding the victim's name, address, and telephone number, comment on the statement, and with the approval of the court, introduce testimony or other information alleging a factual inaccuracy in the **VIS**. **Art. 56.03(e).**
    - ✓ **Recommendation:** Upon receipt of a completed **VIS**, make one copy of the **VIS** and stamp "copy." Because the victim's address and phone number may not be a part of the court file, separate the Confidential Information Sheet from the **VIS**. Place the Confidential Information Sheet in a sealed envelope stamped "CONFIDENTIAL" and place the rest of the **VIS** in a sealed envelope stamped "**VIS** COPY." Staple the two envelopes together. Place these envelopes in the court's file. The envelope containing the confidential information sheet should remain sealed.
    - ✓ **Recommendation:** **ONLY** the "**VIS** COPY" should be available for the defendant and his or her attorney to review if requested. The "CONFIDENTIAL" envelope should remain sealed throughout the prosecution.
    - ✓ **Recommendation:** Place the original VIS in an envelope marked "ORIGINAL **VIS**."
5. If the court sentences the defendant to imprisonment in the TDCJ, the court shall attach the copy of the **VIS** to the commitment papers. **Art. 56.04(e).**
- The judgment should reflect whether the VIS was returned to the attorney representing the state pursuant to Art. 56.03(e). **Art. 42.01 (Sec. 11).**
  - A county that transfers a defendant to the TDCJ under this article (Art. 42) shall deliver to an officer designated by the department a copy of the VIS, if one has been prepared in the case under Art. 56.03. **Art. 42.09.**
  - Explain to a victim that the **VIS** will be considered by the Board of Pardons and Paroles before an inmate is released on parole **Art. 56.02(a)(13)(B).** This is contingent on the TDCJ receiving the VIS in the offender's penitentiary packet (Art. 42.09), which will be processed to add the victim, if requested, to the TDCJ VSD VNS and be included in the offender's parole review file.
  - If the victim states on the **VIS** that he wishes to be notified of parole proceedings, the victim, guardian, or relative is responsible for notifying the Board of Pardons and Paroles of any change of address **Art. 56.03(d).**

This is contingent on the TDCJ receiving the VIS in the offender's penitentiary packet (Art. 42.09), which will be processed to add the victim, if requested, to the TDCJ VSD VNS and be included in the offender's parole review file. Explain to the victim that they can contact the TDCJ VSD to determine if the VIS was received and request to be registered on the TDCJ VSD VNS. Explain to the victim that if they do not provide notification regarding a change in their contact information, they will not be notified when the offender is in the parole review process, escapes or is released to supervision or direct discharge. They will also not be notified of when and how to submit protest materials for the Board of Pardons and Paroles to consider prior to releasing the offender on parole supervision.

- The Supplemental Sheet of the **VIS** is designed to collect information, if the victim is a child, regarding whether there is an existing court order granting the defendant possession of or access to the victim. If information collected indicates the defendant is granted access or possession under court order and the defendant is subsequently confined by the TDCJ CID as a result of the commission of the offense, the victim services office of the department (TDCJ) shall contact the court issuing the order before the defendant is released from the department (TDCJ) on parole or mandatory supervision. **Art. 56.03(i).**
- ✓ **Recommendation:** The district clerk takes the envelopes containing the copy of the **VIS** and the unopened envelope containing the Confidential Information Sheet, staples the **VIS** back together and attaches it to the commitment papers. The copy is then sent to the TDCJ CID.

**IMPORTANT** → If at any time it becomes apparent that a **VIS** has not been sent with the offender's commitment papers to the TDCJ CID, immediately forward a copy to the TDCJ VSD at:  
Mail: 8712 Shoal Creek Blvd. Suite 265 Austin, TX 78757-6899.  
Fax: 512.452.0825 or 512.452.1025.  
Email: [victim.svc@tdcj.state.tx.us](mailto:victim.svc@tdcj.state.tx.us). ← **IMPORTANT**

6. If the court sentences the defendant to a term of community supervision, the attorney representing the state shall forward any **VIS** received in the case to the CSCD supervising the defendant **Art. 56.03(e).**
  - The judgment should reflect whether the VIS was returned to the attorney representing the state pursuant to Art. 56.03(e). **Art. 42.01 (Sec. 11).**
  - ✓ **Recommendation:** The attorney representing the state should forward the original **VIS** to the CSCD. The attorney representing the state may keep a copy of the **VIS** for their records.
7. If probation is revoked and the offender is sentenced to the TDCJ.
  - The judgment should reflect whether the VIS was returned to the attorney representing the state pursuant to Art. 56.03(e). **Art. 42.01 (Sec. 11).**
  - ✓ **Recommendation:** If the defendant's probation is revoked, the CSCD should forward the **VIS** to the district attorney's office. The district attorney should make a copy of the original **VIS** and give this copy to the court to attach to the offender's commitment papers. Refer to recommendations listed under #5 of this document.
8. If the defendant receives shock probation.
  - ✓ **Recommendation:** Refer to recommendations listed under #5 of this document. **VIS** should follow steps for an offender sentenced to the TDCJ.

- ✓ **Recommendation:** If the TDCJ VSD is notified that an offender is sent back to the county for a shock probation case, the TDCJ VSD should collaborate with the TDCJ Community Justice Assistance Division (CJAD) to ensure a copy of the **VIS** is available to the appropriate CSCD. The TDCJ CJAD will coordinate with the CSCD and/or the attorney representing the state's office.

9. If the defendant is sentenced to county jail.

- The judgment should reflect whether the **VIS** was returned to the attorney representing the state pursuant to Art. 56.03(e). **Art. 42.01 (Sec. 11)**.
- ✓ **Recommendation:** If the defendant is sentenced to county jail, the **VIS** should remain in the state's file; follow office procedure regarding records retention.

10. If the defendant is acquitted.

- ✓ **Recommendation:** If the defendant is acquitted, the **VIS** should remain in the state's file; follow office procedure regarding records retention.

11. If the defendant is acquitted by reason of insanity.

- When the court issues an order that requires the release of an acquitted person on discharge or on a regimen of outpatient care, the clerk of the court issuing the order, using the information provided on any victim impact statement received by the court under Art. 56.03 or other information made available to the court, shall notify the victim or the victim's guardian or close relative of the release. Notwithstanding Art. 56.03(f), the clerk of the court may inspect the **VIS** for the purpose of notification under this article (Art. 46C.003). Upon request by the clerk of the court, a VAC may provide the clerk with information or other assistance necessary for the clerk to comply with this article (Art. 46C.003). **Art. 46C.003**.

12. If the victim does **NOT** return the **VICTIM IMPACT STATEMENT**.

- ✓ **Recommendation:** Follow up with the victim to explain the purpose of the **VIS**.
  - follow up with the victim and encourage the victim to complete the **VIS** throughout the prosecution by contacting the victim by phone, email, mail, or in person at regular intervals;
  - place a **VIS** reminder sticker on all mailings to the victim;
  - if the **VIS** is not returned within 30 days send a letter offering to resend the **VIS**;
  - if the **VIS** comes back non-deliverable due to a move and no forwarding address is known, contact the victim by phone and/or email;
  - if the victim states he/she does not wish to fill out a **VIS**:
    - Explain to the victim that, if they wish, they can complete the Victim Contact Information Sheet portion of the **VIS**, which will be used to provide notifications by the attorney representing the state's office and either probation and/or the TDCJ VSD (depending on the conviction and sentence of the offender).
    - With that information, if the victim states he/she does not want to complete the form, make a notation in the file;
    - Explain to the victim that, if the offender is convicted and sentenced to the TDCJ CID, it is the victim's responsibility to notify the TDCJ VSD office if he/she wishes to receive notifications regarding the offender. Notifications include, but are not limited to: when the offender is in the parole review process; when and how to submit protest materials for consideration by the Board of Pardons and Paroles; if the offender escapes; when the

offender is recaptured; when an offender is transferred from the custody of the TDCJ to the custody of a peace officer under a writ of attachment or a bench warrant; and if and when the offender is released to supervision or direct discharge.

### **13. VICTIM IMPACT STATEMENT Reporting**

- At quarterly intervals, state and local agencies are required to complete and submit the required TDCJ survey form (**VIS** Activity Report) prescribed for reporting statistical data and other information on the numbers and types of persons to whom your agency provides **VISs** during each year. These forms are collected to determine whether an agency or office is making a good faith effort to protect the rights of the persons served **Art. 56.05(a-b)**. The **VIS** Activity Report is emailed or mailed to the agencies prior to the due date. The **VIS** Activity Report is available to download at [www.tdcj.state.tx.us/publications/pubs\\_victim\\_impact\\_statement.html](http://www.tdcj.state.tx.us/publications/pubs_victim_impact_statement.html) or contact the TDCJ VSD at 1-800-848-4284 or [tdcj.clearinghouse@tdcj.state.tx.us](mailto:tdcj.clearinghouse@tdcj.state.tx.us) to request a copy.